

ESHB 1489 - S COMM AMD

By Committee on Environment, Water & Energy

ADOPTED AND ENGROSSED 3/25/11

1 Strike everything after the enacting clause and insert the  
2 following:

3 "Sec. 1. RCW 15.54.270 and 1998 c 36 s 2 are each amended to read  
4 as follows:

5 ~~((Terms used in))~~ The definitions in this section apply throughout  
6 this chapter ~~((have the meaning given to them in this chapter))~~ unless  
7 the context clearly ~~((indicates))~~ requires otherwise.

8 (1) "Brand" means a term, design, or trademark used in connection  
9 with the distribution and sale of one or more grades of commercial  
10 fertilizers.

11 (2) "Bulk fertilizer" means commercial fertilizer distributed in a  
12 nonpackaged form such as, but not limited to, tote bags, tote tanks,  
13 bins, tanks, trailers, spreader trucks, and railcars.

14 (3) "Calcium carbonate equivalent" means the acid-neutralizing  
15 capacity of an agricultural liming material expressed as a weight  
16 percentage of calcium carbonate.

17 (4) "Commercial fertilizer" means a substance containing one or  
18 more recognized plant nutrients and that is used for its plant nutrient  
19 content or that is designated for use or claimed to have value in  
20 promoting plant growth, and shall include limes, gypsum, and  
21 manipulated animal and vegetable manures. It does not include  
22 unmanipulated animal and vegetable manures, organic waste-derived  
23 material, and other products exempted by the department by rule.

24 (5) "Composting" means the controlled aerobic degradation of  
25 organic waste materials. Natural decay of organic waste under  
26 uncontrolled conditions is not composting.

27 (6) "Customer-formula fertilizer" means a mixture of commercial  
28 fertilizer or materials of which each batch is mixed according to the  
29 specifications of the final purchaser.

1 (7) "Department" means the department of agriculture of the state  
2 of Washington or its duly authorized representative.

3 (8) "Director" means the director of the department of agriculture.

4 (9) "Distribute" means to import, consign, manufacture, produce,  
5 compound, mix, or blend commercial fertilizer, or to offer for sale,  
6 sell, barter, exchange, or otherwise supply commercial fertilizer in  
7 this state.

8 (10) "Distributor" means a person who distributes.

9 (11) "Fertilizer material" means a commercial fertilizer that  
10 either:

11 (a) Contains important quantities of no more than one of the  
12 primary plant nutrients: Nitrogen, phosphate, and potash;

13 (b) Has eighty-five percent or more of its plant nutrient content  
14 present in the form of a single chemical compound; or

15 (c) Is derived from a plant or animal residue or by-product or  
16 natural material deposit that has been processed in such a way that its  
17 content of plant nutrients has not been materially changed except by  
18 purification and concentration.

19 (12) "Grade" means the percentage of total nitrogen, available  
20 phosphoric acid, and soluble potash stated in whole numbers in the same  
21 terms, order, and percentages as in the "guaranteed analysis," unless  
22 otherwise allowed by a rule adopted by the department. Specialty  
23 fertilizers may be guaranteed in fractional units of less than one  
24 percent of total nitrogen, available phosphorus or phosphoric acid, and  
25 soluble potassium or potash. Fertilizer materials, bone meal, manures,  
26 and similar materials may be guaranteed in fractional units.

27 (13) "Guaranteed analysis."

28 (a) Until the director prescribes an alternative form of  
29 "guaranteed analysis" by rule the term "guaranteed analysis" shall mean  
30 the minimum percentage of plant nutrients claimed in the following  
31 order and form:

32	Total nitrogen (N)	.....	percent
33	Available phosphoric acid (P <sub>2</sub> O <sub>5</sub> )	....	percent
34	Soluble potash (K <sub>2</sub> O)	.....	percent

1 The percentage shall be stated in whole numbers unless otherwise  
2 allowed by the department by rule.

3 The "guaranteed analysis" may also include elemental guarantees for  
4 phosphorus (P) and potassium (K).

5 (b) For unacidulated mineral phosphatic material and basic slag,  
6 bone, tankage, and other organic phosphatic materials, the total  
7 phosphoric acid or degree of fineness may also be guaranteed.

8 (c) Guarantees for plant nutrients other than nitrogen, phosphorus,  
9 and potassium shall be as allowed or required by rule of the  
10 department. The guarantees for such other nutrients shall be expressed  
11 in the form of the element.

12 (d) The guaranteed analysis for limes shall include the percentage  
13 of calcium or magnesium expressed as their carbonate; the calcium  
14 carbonate equivalent as determined by methods prescribed by the  
15 association of official analytical chemists; and the minimum percentage  
16 of material that will pass respectively a one hundred mesh, sixty mesh,  
17 and ten mesh sieve. The mesh size declaration may also include the  
18 percentage of material that will pass additional mesh sizes.

19 (e) In commercial fertilizer, the principal constituent of which is  
20 calcium sulfate (gypsum), the percentage of calcium sulfate ( $\text{CaSO}_4 \cdot 2\text{H}_2\text{O}$ )  
21 shall be given along with the percentage of total sulfur.

22 (14) "Imported fertilizer" means any fertilizer distributed into  
23 Washington from any other state, province, or country.

24 (15) "Label" means the display of all written, printed, or graphic  
25 matter, upon the immediate container, or a statement accompanying a  
26 fertilizer.

27 (16) "Labeling" includes all written, printed, or graphic matter,  
28 upon or accompanying a commercial fertilizer, or advertisement,  
29 brochures, posters, television, and radio announcements used in  
30 promoting the sale of such fertilizer.

31 (17) "Licensee" means the person who receives a license to  
32 distribute a commercial fertilizer under the provisions of this  
33 chapter.

34 (18) "Lime" means a substance or a mixture of substances, the  
35 principal constituent of which is calcium or magnesium carbonate,  
36 hydroxide, or oxide, singly or combined.

37 (19) "Manipulation" means processed or treated in any manner,  
38 including drying to a moisture content less than thirty percent.

1 (20) "Manufacture" means to compound, produce, granulate, mix,  
2 blend, repackage, or otherwise alter the composition of fertilizer  
3 materials.

4 (21) "Micronutrients" are: Boron; chlorine; cobalt; copper; iron;  
5 manganese; molybdenum; sodium; and zinc.

6 (22) "Micronutrient fertilizer" means a produced or imported  
7 commercial fertilizer that contains commercially valuable  
8 concentrations of micronutrients but does not contain commercially  
9 valuable concentrations of nitrogen, phosphoric acid, available  
10 phosphorus, potash, calcium, magnesium, or sulfur.

11 (23) "Official sample" means a sample of commercial fertilizer  
12 taken by the department and designated as "official" by the department.

13 (24) "Organic waste-derived material" means grass clippings,  
14 leaves, weeds, bark, plantings, prunings, and other vegetative wastes,  
15 uncontaminated wood waste from logging and milling operations, food  
16 wastes, food processing wastes, and materials derived from these wastes  
17 through composting. "Organic waste-derived material" does not include  
18 products that include biosolids.

19 (25) "Packaged fertilizer" means commercial fertilizers, either  
20 agricultural or specialty, distributed in nonbulk form.

21 (26) "Person" means an individual, firm, brokerage, partnership,  
22 corporation, company, society, or association.

23 (27) "Percent" or "percentage" means the percentage by weight.

24 (28) "Produce" means to compound or fabricate a commercial  
25 fertilizer through a physical or chemical process, or through mining.  
26 "Produce" does not include mixing, blending, or repackaging commercial  
27 fertilizer products.

28 (29) "Registrant" means the person who registers commercial  
29 fertilizer under the provisions of this chapter.

30 (30) "Specialty fertilizer" means a commercial fertilizer  
31 distributed primarily for nonfarm use, such as, but not limited to, use  
32 on home gardens, lawns, shrubbery, flowers, golf courses, municipal  
33 parks, cemeteries, greenhouses, and nurseries.

34 (31) "Ton" means the net weight of two thousand pounds avoirdupois.

35 (32) "Total nutrients" means the sum of the percentages of total  
36 nitrogen, available phosphoric acid, and soluble potash as guaranteed  
37 and as determined by analysis.

1 (33) "Washington application rate" is calculated by using an  
2 averaging period of up to four consecutive years that incorporates  
3 agronomic rates that are representative of soil, crop rotation, and  
4 climatic conditions in Washington state.

5 (34) "Waste-derived fertilizer" means a commercial fertilizer that  
6 is derived in whole or in part from solid waste as defined in chapter  
7 70.95 or 70.105 RCW, or rules adopted thereunder, but does not include  
8 fertilizers derived from biosolids or biosolids products regulated  
9 under chapter 70.95J RCW or wastewaters regulated under chapter 90.48  
10 RCW.

11 (35)(a) "Turf" means land, including residential property,  
12 commercial property, and publicly owned land, which is planted in  
13 closely mowed, managed grass.

14 (b) "Turf" does not include pasture land, land used to grow grass  
15 for sod, or any other land used for agricultural production or  
16 residential vegetable or flower gardening.

17 (36) "Turf fertilizer" means a commercial fertilizer that is  
18 labeled for use on turf.

19 NEW SECTION. Sec. 2. A new section is added to chapter 15.54 RCW  
20 to read as follows:

21 (1) A person may not:

22 (a) Except as otherwise provided in this section, apply turf  
23 fertilizer that is labeled as containing phosphorus to turf;

24 (b) Apply turf fertilizer labeled as containing phosphorus to turf  
25 when the ground is frozen;

26 (c) Intentionally apply turf fertilizer labeled as containing  
27 phosphorus to an impervious surface;

28 (d) Except as otherwise provided in this section, sell turf  
29 fertilizer that is labeled as containing phosphorus; or

30 (e) Display turf fertilizer that is labeled as containing  
31 phosphorus in a retail store unless the turf fertilizer is also clearly  
32 labeled for a use permitted by this section.

33 (2) The prohibitions in this section on the application, sale, and  
34 retail display of turf fertilizer that is labeled as containing  
35 phosphorus, other than the prohibitions in subsection (1)(b) and (c) of  
36 this section, do not apply in the following instances:

1 (a) Application for the purpose of establishing grass or repairing  
2 damaged grass, using either seeds or sod, during the growing season in  
3 which the grass is established;

4 (b) Application to an area if the soil in the area is deficient in  
5 plant available phosphorus, as shown by a soil test performed no more  
6 than thirty-six months before the application; or

7 (c) Application to pasture, interior house plants, flower and  
8 vegetable gardens located on either public or private property, land  
9 used to grow grass for sod, or any land used for agricultural or  
10 silvicultural production.

11 (3) If a retailer can show proof that a product prohibited for sale  
12 under subsection (1)(d) and (e) of this section was in stock and  
13 physically in the retail location before January 1, 2012, that retail  
14 location may sell that product until it is sold out.

15 (4)(a) Nothing in this section:

16 (i) Requires the enforcement or monitoring of compliance with this  
17 section by local governments; or

18 (ii) Requires local governments to participate in the  
19 administration of this section, including the verification of soil  
20 tests under subsection (2)(b) of this section.

21 (b) A city or county may not adopt a local ordinance regarding the  
22 application or sale of turf fertilizer that is labeled as containing  
23 phosphorus that is less restrictive than this section.

24 **Sec. 3.** RCW 15.54.470 and 1998 c 36 s 11 are each amended to read  
25 as follows:

26 (1) Except for violations of section 2 of this act, any person who  
27 violates any provision of this chapter shall be guilty of a  
28 misdemeanor, and the fines collected shall be disposed of as provided  
29 under RCW 15.54.480.

30 (2) Nothing in this chapter shall be considered as requiring the  
31 department to report for prosecution or to cancel the registration of  
32 a commercial fertilizer product or to stop the sale of fertilizers for  
33 violations of this chapter, when violations are of a minor character,  
34 and/or when the department believes that the public interest will be  
35 served and protected by a suitable notice of the violation in writing.

36 (3) It shall be the duty of each prosecuting attorney to whom any  
37 violation of this chapter is reported, to cause appropriate proceedings

1 to be instituted and prosecuted in a court of competent jurisdiction  
2 without delay. Before the department reports a violation of this  
3 chapter for such prosecution, an opportunity shall be given the  
4 distributor to present his or her view in writing or orally to the  
5 department.

6 (4) The department is hereby authorized to apply for, and the court  
7 authorized to grant, a temporary or permanent injunction restraining  
8 any person from violating or continuing to violate any of the  
9 provisions of this chapter or any rule adopted under this chapter,  
10 notwithstanding the existence of any other remedy at law. Any such  
11 injunction shall be issued without bond.

12 **Sec. 4.** RCW 15.54.474 and 1998 c 36 s 12 are each amended to read  
13 as follows:

14 Except for violations of section 2 of this act, every person who  
15 fails to comply with this chapter, or any rule adopted under it, may be  
16 subjected to a civil penalty, as determined by the director, in an  
17 amount of not more than seven thousand five hundred dollars for every  
18 such violation. Each and every such violation shall be a separate and  
19 distinct offense. Every person, who, through an act of commission or  
20 omission, procures, aids, or abets in the violation shall be considered  
21 to have violated this chapter and may be subject to the penalty  
22 provided for in this section.

23 NEW SECTION. **Sec. 5.** This act takes effect January 1, 2013."

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24 On page 1, line 2 of the title, after "phosphorus;" strike the  
25 remainder of the title and insert "amending RCW 15.54.270, 15.54.470,  
26 and 15.54.474; adding a new section to chapter 15.54 RCW; and providing  
27 an effective date."

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